

2011 DRAFTING REQUEST

Bill

Received: **09/08/2011**

Received By: **jkuesel**

Wanted: **As time permits**

Companion to LRB:

For: **Jon Erpenbach (608) 266-6670**

By/Representing: **Jessica Karls-Ruplinger**

May Contact:

Drafter: **jkuesel**

Subject: **Elections - campaign finance**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Erpenbach@legis.wisconsin.gov**

Carbon copy (CC:) to: **Jessica.Karls@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Disbursements by corporations; campaign finance scope of regulation

Instructions:

Per attached E mail, 9/8/11.

Drafting History:

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/?	jkuesel 10/05/2011	mduchek 10/06/2011		_____			
/1			jfrantze 10/07/2011	_____	mbarman 10/07/2011		
/2	jkuesel 11/17/2011	kfollett 11/18/2011	rschluet 11/21/2011	_____	sbasford 11/21/2011	lparisi 11/21/2011	
/3	jkuesel 12/18/2011	csicilia 12/19/2011	rschluet 12/19/2011	_____	mbarman 12/19/2011	mbarman 12/19/2011	

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/4	jkuesel 12/20/2011	wjackson 12/21/2011	rschluet 12/21/2011	_____	mbarman 12/21/2011	mbarman 12/21/2011	

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none

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1/?	jkuesel	10/6/11 1/1	10/6	R3 10/7			

FE Sent For:

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Kuesel, Jeffery

To: Karls-Ruplinger, Jessica
Subject: RE: Bill for Sen. Erpenbach

Jessica,

Yes, that's the issue. Once we broaden the definition of "disbursement" we are extending our corporate ban and we cannot enforce it.

Jeff.

From: Karls-Ruplinger, Jessica
Sent: Friday, September 09, 2011 11:25 AM
To: Kuesel, Jeffery
Subject: RE: Bill for Sen. Erpenbach

Jeff,

I am aware of the issue with 1.b. and *Citizens United*. A drafter's note is appropriate. I assume that your drafter's note will explain that the reporting and registration requirements in ch. 11, Stats., will apply to these additional communications but that, while the corporate prohibition in s. 11.38, Stats., would technically extent to these communications, the prohibition's application to independent expenditures is not enforceable because of *Citizens United*. Is this an accurate description?

Jessica

Jessica Karls-Ruplinger
Senior Staff Attorney
Wisconsin Legislative Council
(608) 266-2230
Jessica.Karls@legis.wisconsin.gov

From: Kuesel, Jeffery
Sent: Thursday, September 08, 2011 1:48 PM
To: Karls-Ruplinger, Jessica
Cc: Laundrie, Julie
Subject: RE: Bill for Sen. Erpenbach

Jessica,

On 1. b., per our previous discussion, this provision bans corporations from making certain expenditures relating to judicial offices and does not appear to square with the *Citizens United* decision. We can draft it anyway, but I will include the note we have used in the past.

On 2. this provision is similar to SB-67 (Sen. Wirth and others). The draft will need to have the same feature that Sen. Wirth included, namely, that the existing corporate disbursement ban is suspended when GAB finds that there is a period of unenforceability (and, of course, resumes effectiveness if GAB finds otherwise). That way we will not be requiring corporations to go through an involved procedure to enable something that's prohibited. The alternative is to repeal the corporate ban entirely, but Sen. Wirth and most other Democrats don't seem to like that alternative.

Jeff

From: Karls-Ruplinger, Jessica
Sent: Thursday, September 08, 2011 1:17 PM
To: Kuesel, Jeffery
Cc: Laundrie, Julie

Subject:

Bill for Sen. Erpenbach

Jeff,

Senator Jon Erpenbach wants a bill that does the following: (1) defines "political purpose" to include the communications described in Senate Amendment 4 to 2011 Assembly Bill 40 (to expand the reporting and registration requirements in ch. 11, Stats., to apply to those communications); and (2) requires that a corporation or labor organization receive the authorization of its governing body to make an independent disbursement. Below are the specific instructions for these two items. The contact person in Sen. Erpenbach's office is Julie Landrie.

Item 1: Definition of "Political Purpose"

1. **Add the following communications to the definition of "political purpose":**
 - a. **A mass communication that is made during the period beginning on the 60th day preceding an election and ending on the date of that election and that includes a reference to a candidate, an office to be filled, or a political party.**
 - b. **A mass communication that refers to a judicial office and either focuses on and takes a position for or against a judicial candidate's position on an issue or takes a position on that judicial candidate's character, qualifications, or fitness for office.**

[Use the text from Senate Amendment 4 to 2011 Assembly Bill 40, items 1 & 2.]

2. **Require that a registrant who makes a disbursement of more than \$500 cumulatively to make a communication in 1.a. or b., above, later than 60 days prior to a primary or other election report that disbursement within 24 hours after making the disbursement.**

[Use the text from Senate Amendment 4 to 2011 Assembly Bill 40, item 3.]

Item 2: Authorization for Independent Disbursements by Corporations and Labor Organizations

1. **Require that a corporation or labor organization receive the authorization of a majority of its governing body for the corporation or labor organization to make an independent disbursement. Further, require that the reports filed by the corporation or labor organization relating to independent disbursements include a certification that the governing body authorized the independent disbursement.**

[Use text similar to that in Iowa Code s. 68A.404 (2) (a) and (b) and (5) (g). The following is the text from Iowa Code s. 68A.404 (2) (a) and (b) and (5) (g):

2. a. An entity, other than an individual or individuals, shall not make an independent expenditure or disburse funds from its treasury to pay for, in whole or in part, an independent expenditure made by another person without the authorization of a majority of the entity's board of directors, executive council, or similar organizational leadership body of the use of treasury funds for an independent expenditure involving a candidate or ballot issue committee. Such authorization must occur in the same calendar year in which the independent expenditure is incurred.

b. Such authorization shall expressly provide whether the board of directors, executive council, or similar organizational leadership body authorizes one or more independent expenditures that expressly advocate the nomination or election of a candidate or passage of a ballot issue or authorizes one or more independent expenditures that expressly advocate the defeat of a

candidate or ballot issue.

5. The independent expenditure statement shall contain all of the following information: ...

g. A certification by an officer of the corporation that the board of directors, executive council, or similar organizational leadership body expressly authorized the independent expenditure or use of treasury funds for the independent expenditure by resolution or other affirmative action within the calendar year when the independent expenditure was incurred.]

Please let me know if you have any questions or need additional information.

Jessica

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Senior Staff Attorney
Wisconsin Legislative Council
(608) 266-2230
Jessica.Karls@legis.wisconsin.gov



DNOTE
State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2849/1

JTK 8/.....

Mar 10/10

wj/kjt/cjs/med

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

- Gren
- 1 AN ACT relating to: political disbursements and obligations by corporations,
2 cooperative associations, and labor organizations and the scope of regulated
3 activity and reporting of certain activity under the campaign finance law.

Analysis by the Legislative Reference Bureau

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NOT the corporation, cooperative, or labor organization must obtain the express approval of a majority of the members of the board of directors, executive council, or other governing body of the corporation, cooperative, or labor organization by vote of that body taken during the same calendar year in which the disbursement is made or the obligation is incurred. The bill also requires each financial report filed by the corporation, cooperative, or labor organization that includes a report of any disbursement made, or obligation to make a disbursement incurred, by the corporation, cooperative, or labor organization to also include a statement that a majority of the members of the board of directors, executive council, or other governing body of the corporation, cooperative, or labor organization has expressly voted to authorize the disbursement or obligation during the same calendar year in which it is made or incurred.

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The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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SECTION 1. 11.06 (1) (n) of the statutes is created to read:

11.06 (1) (n) In the case of a corporation, cooperative association organized under ch. 185 or 193, or labor organization that makes disbursements or incurs obligations to make disbursements expressly advocating the election or defeat of a clearly identified candidate without cooperation or consultation with a candidate, or any authorized committee or agent of a candidate, and not in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of a candidate, ~~a statement~~ during a period when a finding of unenforceability under s. 11.38 (9) is in effect, a statement that a majority of the members of the board of directors, executive council, or other governing body of the corporation, association, or organization has expressly voted, ~~to authorize the disbursement to be made or obligation to be incurred~~ during the same calendar year in which the disbursement is made or the obligation is incurred. *to authorize the disbursement to be made or the obligation to be incurred*

SECTION 2. 11.38 (title) of the statutes is amended to read:

11.38 (title) Contributions and disbursements by corporations and, cooperatives and labor organizations.

History: 1973 c. 334; 1975 c. 93; 1977 c. 427; 1979 c. 528; 1985 a. 303 ss. 71, 72, 86; 1987 a. 370; 1991 a. 316; 2001 a. 109; 2005 a. 177, 441; 2007 a. 1; 2009 a. 313.

SECTION 3. 11.38 (1) (a) 1. of the statutes is amended to read:

11.38 (1) (a) 1. ~~No~~ Except as authorized in sub. (9), no foreign or domestic corporation, or association organized under ch. 185 or 193, may make any contribution or disbursement, directly or indirectly, either independently or through any political party, committee, group, candidate or individual for any purpose other than to promote or defeat a referendum.

History: 1973 c. 334; 1975 c. 93; 1977 c. 427; 1979 c. 528; 1985 a. 303 ss. 71, 72, 86; 1987 a. 370; 1991 a. 316; 2001 a. 109; 2005 a. 177, 441; 2007 a. 1; 2009 a. 313.

SECTION 4. 11.38 (3e) of the statutes is created to read:

11.38 (3e) Each corporation, cooperative association organized under ch. 185 or 193 or labor organization that wishes to make disbursements or to incur

1 obligations to make disbursements during a period when a finding of
2 unenforceability under sub. (9) is in effect may do so only if a majority of the members
3 of the board of directors, executive council, or other governing body of the
4 corporation, association, or organization expressly votes to authorize the
5 disbursements to be made or ^{the} obligations to be incurred during the same calendar
6 year in which the disbursement is made or the obligation is incurred.

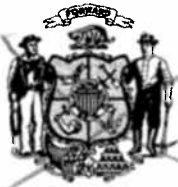
7 **SECTION 5.** 11.38 (9) of the statutes is created to read:

8 11.38 (9) If a court with jurisdiction in this state finds in a reported decision,
9 whether or not applicable in this state, that a prohibition against the making of
10 political expenditures by corporations or similar entities is not enforceable for
11 constitutional reasons, or if any such court later finds in a reported decision that such
12 a prohibition is enforceable, the board shall promptly publish a finding to that effect
13 in the Wisconsin Administrative Register. The prohibition against disbursements
14 under sub (1) (a) 1. does not apply whenever a finding of unenforceability is in effect
15 if the corporation ^{or association} making a disbursement complies with sub. (3e).

16 ~~END~~
SECTION # Initial applicability.

hrs
3-16 →

(end)



State of Wisconsin
2011 - 2012 LEGISLATURE

INSA



LRB-0325/1

JTK:wlj:jt

2011 SENATE BILL 67

April 19, 2011 – Introduced by Senators WIRCH, HANSEN, HOLPERIN, C. LARSON and LASSA, cosponsored by Representatives BERCEAU, FIELDS, HEBL, HULSEY and POCAN. Referred to Committee on Transportation and Elections.

1 AN ACT *to amend* 11.06 (2); and *to create* 11.01 (16) (a) 3., 11.05 (3) (q), 11.05
2 (3) (s), 11.38 (1m), 11.38 (3e) and 11.38 (9) of the statutes; **relating to:** political
3 disbursements and obligations by corporations and cooperative associations
4 and the scope of regulated activity under the campaign finance law.

Analysis by the Legislative Reference Bureau

Under current law, corporations and cooperatives are prohibited from making contributions or disbursements (expenditures) in campaigns for state or local office. Violators are subject to a forfeiture (civil penalty) of not more than \$500 for each violation. Intentional violators are guilty of a Class I felony, which is punishable by a fine of not more than \$10,000 or imprisonment for three and one-half years, or both, except that if a violation involves \$100 or less, the violation is punishable as a misdemeanor with a fine of not more than \$1,000 or imprisonment for not more than six months, or both. A recent decision of the U.S. Supreme Court has cast doubt about whether this law is enforceable as it applies to disbursements. See *Citizens United v. F.E.C.*, Case No. 08-205 (2010).

This bill provides that if a court with jurisdiction in this state finds in a reported decision, whether or not applicable in this state, that a prohibition against the making of political expenditures by corporations or similar entities is not enforceable for constitutional reasons, the Government Accountability Board (GAB) must publish a finding to that effect. The bill provides that, during a period when a finding of unenforceability is in effect, before a corporation or cooperative may make a disbursement or incur an obligation to make a disbursement for the purpose of

130 S. Ct.
876

then

or
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organization



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBs0269/1
JTK:wlj:md

ASSEMBLY SUBSTITUTE AMENDMENT
TO 2009 SENATE BILL 43

WSB:1

1 AN ACT *to amend* 11.06 (2), 13.621 (1) (b), 13.621 (2), 13.621 (3), 13.685 (1),
2 13.685 (2), 13.685 (4), 13.685 (7), 13.69 (1), 13.69 (3) and 13.69 (6m); and *to*
3 *create* 11.001 (1m), 11.01 (12v), 11.01 (12w), 11.01 (13), 11.01 (14), 11.01 (16)
4 (a) 3., 11.01 (16) (a) 4., 11.05 (3) (s), 11.12 (7), 13.62 (7), 13.682 and 13.75 (6) of
5 the statutes; **relating to:** the scope of regulated activity and the filing of certain
6 reports under the campaign finance law and the lobbying regulation law and
7 providing penalties.

Analysis by the Legislative Reference Bureau

Currently, individuals who accept contributions, organizations that make or accept contributions, and individuals who or organizations that incur obligations or make disbursements for the purpose of influencing an election for state or local office are generally required to register with the appropriate filing officer and to file financial reports with that officer, regardless of whether they act in conjunction with or independently of any candidate who is supported or opposed.

With certain exceptions, this ~~substitute amendment~~ imposes registration and reporting requirements, in addition, upon any individual who and organization that,

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within 60 days of an election, makes any mass communication, including an electronic communication, a mass distribution or a mass telephoning, that includes a reference to a candidate at that election, an office to be filled at that election, or a political party. The ~~substitute amendment~~ imposes registration and reporting requirements upon any individual who or organization that, at any time, makes any mass communication that refers to a candidate for judicial office and either focuses on and takes a position for or against a judicial candidate's position on an issue or takes a position on that judicial candidate's character, qualifications, or fitness for office. In addition, the ~~substitute amendment~~ requires an individual who or organization that becomes subject to a registration requirement by making such a communication to report, upon registration, the information that would have been required to be reported if the individual or organization had been registered with respect to any obligation incurred or disbursement made for the purpose of making such a communication prior to registration. The ~~substitute amendment~~, however, does not require registration and reporting if the communication is made by a corporation, cooperative, or nonpolitical voluntary association and is limited to the corporation's, cooperative's, or association's members, shareholders, or subscribers.

The change in the scope of reportable activity under the ~~substitute amendment~~ bill also applies to contribution and disbursement (spending) limitations and restrictions by causing reportable "contributions," "obligations," and "disbursements" to include the cost of all reportable communications.

or other
The ~~substitute amendment~~ also requires a special report by any campaign finance registrant who makes or incurs an obligation to make a mass communication that becomes reportable under the ~~substitute amendment~~ within 60 days of a primary election in an amount greater than \$500 cumulatively since the date of the registrant's last report. The special report must be made within 24 hours after the date that disbursements or obligations that exceed \$500 cumulatively are made or incurred and must include the information that would otherwise be reported on the registrant's next regular report in the form prescribed by ~~the Indiana Code~~ {GAB}.

invokes less than
Violators of registration and reporting requirements are subject to a forfeiture (civil penalty) of not more than \$500 for each violation. In addition, any person who is delinquent in filing a report is subject to a forfeiture of not more than \$50 or 1 percent of the annual salary of the office for which a candidate is being supported or opposed, whichever is greater, for each day of delinquency. Intentional violators of the registration requirements and persons who intentionally file false reports or statements may be fined not more than \$1,000 or imprisoned for not more than six months, or both, if the violation does not exceed \$100 in amount or value, and may be fined not more than \$10,000 or imprisoned for not more than three years and six months, or both, if the violation exceeds \$100 in amount or value.

invokes more than
Under current law, any person who employs another person for the purpose of attempting to influence the state lawmaking process or the state administrative rule-making process by oral or written communication with an elective state official, state agency official, or legislative employee (principal) must register as a principal with GAB and file semiannual reports of its activities, unless the person is exempt

SECTION ~~11.01~~ [✓] 11.01 (12v)

1 11.01 (12v) "Mass communication" means a message that is disseminated by
2 means of one or more communications media, a mass electronic communication, a
3 mass distribution, or a mass telephoning, but not including a bona fide poll
4 conducted for the purpose of objectively identifying or collecting data concerning the
5 attitudes or preferences of electors.

6 SECTION ~~11.01~~ [✓] 11.01 (12w) of the statutes is created to read:

7 11.01 (12w) "Mass distribution" means the distribution of 50 or more pieces of
8 substantially identical material.

9 SECTION ~~11.01~~ [✓] 11.01 (13) of the statutes is created to read:

10 11.01 (13) "Mass electronic communication" means the transmission of 50 or
11 more pieces of substantially identical material by means of electronic mail or
12 facsimile transmission.

13 SECTION ~~11.01~~ [✓] 11.01 (14) of the statutes is created to read:

14 11.01 (14) "Mass telephoning" means the making of 50 or more telephone calls
15 conveying a substantially identical message.

16 SECTION ~~11.01~~ [✓] 11.01 (16) (a) 3. of the statutes is created to read:

17 11.01 (16) (a) 3. A mass communication, other than a communication that is
18 exempt from reporting under s. 11.29, that is made during the period beginning on
19 the 60th day preceding an election and ending on the date of that election, and that
20 includes a reference to a candidate whose name is certified under s. 7.08 (2) (a) or 8.50
21 (1) (d) to appear on the ballot at that election, a reference to an office to be filled at
22 that election, or a reference to a political party under whose name the names of one
23 or more candidates appear on the ballot at that election.

24 SECTION ~~11.01~~ [✓] 11.01 (16) (a) 4. of the statutes is created to read:

→

11.01 (16) (a) 4. A mass communication that refers to a judicial office and either focuses on and takes a position for or against a judicial candidate's position on an issue or takes a position on that judicial candidate's character, qualifications, or fitness for office.

SECTION ~~11.05~~ ^{Hh} 11.05 (3) (s) of the statutes is created to read:

11.05 (3) (s) In the case of a registrant that has made a mass communication identified in s. 11.01 (16) (a) ³ or ⁴, a report containing the information specified in s. 11.06 (1) with respect to any obligation to make a disbursement incurred or any disbursement made for the purpose of making such a communication prior to registration.

~~2. Page 9, line 12: after that line insert:~~

~~SECTION ^{Hd} 11.06 (2) of the statutes is amended to read:~~

11.06 (2) DISCLOSURE OF CERTAIN INDIRECT DISBURSEMENTS. Notwithstanding sub. (1), if a disbursement is made or obligation incurred by an individual other than a candidate or by a committee or group which is not primarily organized for political purposes, ~~and~~ the disbursement does not constitute a contribution to any candidate or other individual, committee, or group, and the disbursement is not made or the obligation is not incurred for the purpose of making a mass communication specified in s. 11.01 (16) (a) 3., the disbursement or obligation is required to be reported only if the purpose is to expressly advocate the election or defeat of a clearly identified candidate or the adoption or rejection of a referendum. The exemption provided by this subsection shall in no case be construed to apply to a political party, legislative campaign, personal campaign, or support committee.

~~3. Page 9, line 21: after that line insert:~~

1 ~~SECTION 11k.~~ 11.12 (7) of the statutes is created to read:

2 11.12 (7) If any registrant makes or incurs an obligation to make a
3 disbursement of more than \$500 cumulatively for the purpose of making a
4 communication specified in s. ^{11.01}~~11.02~~(16) (a) 3. or 4. later than 60 days prior to a
5 primary or other election without cooperation or consultation with any candidate or
6 agent or authorized committee of any candidate who is supported or opposed, and not
7 in concert with or at the request or suggestion of any such candidate, agent, or
8 committee, the registrant shall, within 24 hours after making the disbursement or
9 incurring the obligation to make the disbursement, inform the appropriate filing
10 officer of the information required under s. 11.06 (1) in such manner as the board may
11 prescribe. The registrant shall also include the information in the next regular
12 report of the registrant under s. 11.20. For purposes of this subsection,
13 disbursements and obligations cumulate beginning with the day after the last date
14 covered on the registrant's immediately preceding report and ending with the day
15 before the election. If a registrant has not filed a previous report, disbursements and
16 obligations cumulate beginning on the date of the registrant's registration. A
17 disbursement that was previously reported in a report under this subsection as
18 obligated to be made shall not be included in the cumulative total. Upon receipt of
19 a report under this subsection, the filing officer shall, within 24 hours of receipt,
20 transmit a copy of the report to all candidates for any office in support of or opposition
21 to one of whom a disbursement identified in the report is made or obligated to be
22 made.

23 4. Page 15, line 8: delete lines 8 to 10 and substitute:

24 "SECTION 19m. 13.099 (1) (a) of the statutes is amended to read:

1 s. 13.63 (1), 13.64, 13.65, 13.67 ~~or~~, 13.68, or 13.682 (4) which he or she does not believe
2 to be true is guilty of a Class H felony.

3 **SECTION 63o.** 13.75 (6) of the statutes is created to read:

4 13.75 (6) Filing a registration statement under s. 13.682, \$375.”.

5 **6.** Page 1512, line 1: after that line insert:

6 ~~1. (1) SCOPE OF CAMPAIGN FINANCE REGULATION.~~ The treatment of sections 11.01
7 (12v), (12w), (13), (14), and (16) (a) 3. and 4. and 11.06 (2) of the statutes first applies
8 with respect to contributions received, disbursements made, and obligations
9 incurred on or after the effective date of this subsection.

10 ~~(1r) GRASS ROOTS LOBBYING ACTIVITY.~~ The treatment of sections 13.62 (7), 13.682,
11 and 13.75 (6) of the statutes first applies with respect to expenditures made and
12 obligations incurred on or after the effective date of this subsection.”.

13

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

- 2849/1 du
LRB 1386/1 dm

JTK: ~~dm~~

med

~~11/14/2011~~

(Dank)

Senator Erpenbach:

* In *Citizens United v. F.E.C.*, 130 S.Ct. 876, 896-913 (2010), the U.S. Supreme Court held that the government may not suppress the speech of a corporation engaged in express advocacy or its functional equivalent on the basis of the speaker's identity as a nonprofit or for-profit corporation. Implicitly, the holding also affects communications that may not rise to the level of express advocacy, because the constitution would probably not logically allow more stringent regulation of indirect political advocacy than it would of direct political advocacy.

With certain exceptions, this draft bans corporate mass communications whenever a mass communication a) is made within 60 days of an election and includes a reference to a candidate at that election, an office to be filled at that election, or a political party; or b) refers to a judicial office and either focuses on and takes a position for or against a judicial candidate's position on an issue or takes a position on that judicial candidate's character, qualifications, or fitness for office. Although the *Citizens United* case did not involve judicial campaigns and might be distinguished on that basis, the prohibition in this draft does not conform to the holding in that case. Therefore, a court may distinguish the draft's treatment of this matter from the treatment of the matter by the Court, which could preclude enforcement of the draft's prohibition in whole or in part.

If you would like to discuss this or any related matters further, please let me know.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2849/1dn
JTK:med:jf

October 7, 2011

Senator Erpenbach:

In *Citizens United v. F.E.C.*, 130 S.Ct. 876, 896-913 (2010), the U.S. Supreme Court held that the government may not suppress the speech of a corporation engaged in express advocacy or its functional equivalent on the basis of the speaker's identity as a nonprofit or for-profit corporation. Implicitly, the holding also affects communications that may not rise to the level of express advocacy, because the constitution would probably not logically allow more stringent regulation of indirect political advocacy than it would of direct political advocacy.

With certain exceptions, this draft bans corporate mass communications whenever a mass communication a) is made within 60 days of an election and includes a reference to a candidate at that election, an office to be filled at that election, or a political party; or b) refers to a judicial office and either focuses on and takes a position for or against a judicial candidate's position on an issue or takes a position on that judicial candidate's character, qualifications, or fitness for office. Although the *Citizens United* case did not involve judicial campaigns and might be distinguished on that basis, the prohibition in this draft does not conform to the holding in that case. Therefore, a court may distinguish the draft's treatment of this matter from the treatment of the matter by the Court, which could preclude enforcement of the draft's prohibition in whole or in part.

If you would like to discuss this or any related matters further, please let me know.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

Kuesel, Jeffery

To: Laundrie, Julie
Subject: RE: LRB-2849/1

Julie,
I do agree that this is probably the logical way to go. As I mentioned in the D Note, the *Citizens United* decision only applies to express advocacy but implicitly extends to indirect support as well, so we might as well treat them in the same way.

Jeff Kuesel

From: Laundrie, Julie
Sent: Wednesday, November 16, 2011 9:09 AM
To: Kuesel, Jeffery
Subject: FW: LRB-2849/1

Hey Jeff – thanks for this – just want to make sure you agree with Jessica on the removal issue – see below. I am sure you talked about it but I am a double checker by nature.....

Julei

Julie Laundrie
Office of Senator Jon Erpenbach
608-266-6670 104 South
media contact cell 608-772-0110

From: Karls-Ruplinger, Jessica
Sent: Wednesday, November 16, 2011 8:52 AM
To: Laundrie, Julie
Subject: FW: LRB-2849/1

Julie,

If you notice in the fourth bulletpoint in the email below, I told Jeff to remove "expressly advocating the election or defeat of a clearly identified candidate." I think this change will be enough to capture the communications in SECTIONS 5 and 6 of the bill because the words "disbursements" and "obligations" are defined in such a way that they include the communications in SECTIONS 5 and 6, as well as the current law definition of "political purpose" (which is a communication that expressly advocates the election, defeat, recall or retention of a clearly identified candidate or a particular vote at a referendum).

Jessica

Jessica Karls-Ruplinger
Senior Staff Attorney
Wisconsin Legislative Council
(608) 266-2230
Jessica.Karls@legis.wisconsin.gov

From: Karls-Ruplinger, Jessica
Sent: Wednesday, November 16, 2011 8:49 AM
To: Kuesel, Jeffery
Cc: Laundrie, Julie
Subject: LRB-2849/1

Jeff,

As we discussed this morning, please make the following revisions to LRB-2849/1:

- ✓ • In SECTION 5, remove the following text: ", a reference to an office to be filled at that election, or a reference to a political party under whose name the names of one or more candidates appear on the ballot at that election".
 - ✓ • In SECTIONS 8 and 13, replace "during the same calendar year" with "within 365 days". [You may have to reword this to make it work in the text.]
 - ✓ • In SECTIONS 2, 3, and 4, replace "50" with "500".
 - ✓ • Align the text of SECTIONS 8 and 13. As part of that revision, remove "expressly advocating the election or defeat of a clearly identified candidate" in SECTION 8.
- ✓ Also, should the reference to s. 11.01 (16) (a) 3. in SECTION 9 also include a reference to s. 11.01 (16) (a) 4.?

When LRB-2849/2 is complete, please email a copy of it to me, as well as Julie. Thanks.

Jessica

Jessica Karls-Ruplinger
Senior Staff Attorney
Wisconsin Legislative Council
(608) 266-2230
Jessica.Karls@legis.wisconsin.gov



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2849/1 2

JTK:wlj/kjf/cjs/med:jf

stays

2011 BILL

Regen

1 AN ACT *to amend* 11.06 (2), 11.38 (title) and 11.38 (1) (a) 1.; and *to create* 11.01
2 (12v), 11.01 (12w), 11.01 (13), 11.01 (14), 11.01 (16) (a) 3., 11.01 (16) (a) 4., 11.05
3 (3) (s), 11.06 (1) (n), 11.12 (7), 11.38 (3e) and 11.38 (9) of the statutes; **relating**
4 **to:** political disbursements and obligations by corporations, cooperative
5 associations, and labor organizations and the scope of regulated activity and
6 reporting of certain activity under the campaign finance law.

Analysis by the Legislative Reference Bureau

Under current law, corporations and cooperatives are prohibited from making contributions or disbursements (expenditures) in campaigns for state or local office. Violators are subject to a forfeiture (civil penalty) of not more than \$500 for each violation. Intentional violators are guilty of a Class I felony, which is punishable by a fine of not more than \$10,000 or imprisonment for three and one-half years, or both, except that if a violation involves \$100 or less, the violation is punishable as a misdemeanor with a fine of not more than \$1,000 or imprisonment for not more than six months, or both. A recent decision of the U.S. Supreme Court has cast doubt about whether this law is enforceable as it applies to disbursements. See *Citizens United v. F.E.C.*, 130 S.Ct. 876 (2010).

This bill provides that if a court with jurisdiction in this state finds in a reported decision, whether or not applicable in this state, that a prohibition against the making of political expenditures by corporations or similar entities is not enforceable

BILL- 365-day period
preceding the
date on

for constitutional reasons, the Government Accountability Board (GAB) must publish a finding to that effect. The bill then provides that, during a period when a finding of unenforceability is in effect, before a corporation, cooperative, or labor organization may make a disbursement or incur an obligation to make a disbursement, the corporation, cooperative, or labor organization must obtain the express approval of a majority of the members of the board of directors, executive council, or other governing body of the corporation, cooperative, or labor organization by vote of that body taken during the same calendar year in which the disbursement is made or the obligation is incurred. The bill also requires each financial report filed by the corporation, cooperative, or labor organization that includes a report of any disbursement made, or obligation to make a disbursement incurred, by the corporation, cooperative, or labor organization to also include a statement that a majority of the members of the board of directors, executive council, or other governing body of the corporation, cooperative, or labor organization has expressly voted to authorize the disbursement or obligation during the same calendar year in which it is made or incurred.

Currently, individuals who accept contributions, organizations that make or accept contributions, and individuals who or organizations that incur obligations or make disbursements for the purpose of influencing an election for state or local office are generally required to register with the appropriate filing officer and to file financial reports with that officer, regardless of whether they act in conjunction with or independently of any candidate who is supported or opposed.

With certain exceptions, this bill imposes registration and reporting requirements, in addition, upon any individual who and organization that, within 60 days of an election, makes any mass communication, including an electronic communication, a mass distribution, or a mass telephoning, that includes a reference to a candidate at that election, ~~an office to be filled at that election, or a political party.~~ The bill imposes registration and reporting requirements upon any individual who or organization that, at any time, makes any mass communication that refers to a candidate for judicial office and either focuses on and takes a position for or against a judicial candidate's position on an issue or takes a position on that judicial candidate's character, qualifications, or fitness for office. In addition, the bill requires an individual who or organization that becomes subject to a registration requirement by making such a communication to report, upon registration, the information that would have been required to be reported if the individual or organization had been registered with respect to any obligation incurred or disbursement made for the purpose of making such a communication prior to registration. The bill, however, does not require registration and reporting if the communication is made by a corporation, cooperative, or nonpolitical voluntary association and is limited to the corporation's, cooperative's, or association's members, shareholders, or subscribers.

The change in the scope of reportable activity under the bill also applies to contribution and disbursement (spending) limitations and restrictions by causing reportable "contributions," "obligations," and "disbursements" to include the cost of all reportable communications.

independently
of a
candidateindependently
of a
candidate

also

BILL

The bill also requires a special report by any campaign finance registrant who makes or incurs an obligation to make a mass communication that becomes reportable under the bill within 60 days of a primary or other election in an amount greater than \$500 cumulatively since the date of the registrant's last report. The special report must be made within 24 hours after the date that disbursements or obligations that exceed \$500 cumulatively are made or incurred and must include the information that would otherwise be reported on the registrant's next regular report in the form prescribed by GAB.

Violators of registration and reporting requirements are subject to a forfeiture (civil penalty) of not more than \$500 for each violation. In addition, any person who is delinquent in filing a report is subject to a forfeiture of not more than \$50 or 1 percent of the annual salary of the office for which a candidate is being supported or opposed, whichever is greater, for each day of delinquency. Intentional violators of the registration requirements and persons who intentionally file false reports or statements may be fined not more than \$1,000 or imprisoned for not more than six months, or both, if the violation involves less than \$100 in amount or value, and may be fined not more than \$10,000 or imprisoned for not more than three years and six months, or both, if the violation involves more than \$100 in amount or value.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 11.01 (12v) of the statutes is created to read:

2 11.01 (12v) "Mass communication" means a message that is disseminated by
3 means of one or more communications media, a mass electronic communication, a
4 mass distribution, or a mass telephoning, but not including a bona fide poll
5 conducted for the purpose of objectively identifying or collecting data concerning the
6 attitudes or preferences of electors.

7 **SECTION 2.** 11.01 (12w) of the statutes is created to read:

8 11.01 (12w) "Mass distribution" means the distribution of ⁵⁰⁰~~50~~ or more pieces of
9 substantially identical material.

10 **SECTION 3.** 11.01 (13) of the statutes is created to read:

BILL**SECTION 3**

500

1 11.01 (13) "Mass electronic communication" means the transmission of 50 or
2 more pieces of substantially identical material by means of electronic mail or
3 facsimile transmission.

4 **SECTION 4.** 11.01 (14) of the statutes is created to read:

5 11.01 (14) "Mass telephoning" means the making of 50 or more telephone calls
6 conveying a substantially identical message.

7 **SECTION 5.** 11.01 (16) (a) 3. of the statutes is created to read:

8 11.01 (16) (a) 3. A mass communication, other than a communication that is
9 exempt from reporting under s. 11.29, that is made during the period beginning on
10 the 60th day preceding an election and ending on the date of that election, and that
11 includes a reference to a candidate whose name is certified under s. 7.08 (2) (a) or 8.50
12 (1) (d) to appear on the ballot at that election, ~~a reference to an office to be filled at~~
13 ~~that election, or a reference to a political party under whose name the names of one~~
14 ~~or more candidates appear on the ballot at that election.~~

15 **SECTION 6.** 11.01 (16) (a) 4. of the statutes is created to read:

16 11.01 (16) (a) 4. A mass communication that refers to a judicial office and either
17 focuses on and takes a position for or against a judicial candidate's position on an
18 issue or takes a position on that judicial candidate's character, qualifications, or
19 fitness for office.

20 **SECTION 7.** 11.05 (3) (s) of the statutes is created to read:

21 11.05 (3) (s) In the case of a registrant that has made a mass communication
22 identified in s. 11.01 (16) (a) 3. or 4., a report containing the information specified in
23 s. 11.06 (1) with respect to any obligation to make a disbursement incurred or any
24 disbursement made for the purpose of making such a communication prior to
25 registration.

BILL

✓
SECTION 8. 11.06 (1) (n) of the statutes is created to read:

11.06 (1) (n) In the case of a corporation, cooperative association organized under ch. 185 or 193, or labor organization that makes disbursements or incurs obligations to make disbursements ~~expressly advocating the election or defeat of a clearly identified candidate~~ without cooperation or consultation with a candidate, or any authorized committee or agent of a candidate, and not in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of a candidate, during a period when a finding of unenforceability under s. 11.38 (9) is in effect, a statement that a majority of the members of the board of directors, executive council, or other governing body of the corporation, association, or organization has expressly voted during the ~~same calendar year in which the disbursement is made~~ ^{365-day period preceding the date on} or the obligation is incurred to authorize the disbursement to be made or the obligation to be incurred.

✓
SECTION 9. 11.06 (2) of the statutes is amended to read:

11.06 (2) DISCLOSURE OF CERTAIN INDIRECT DISBURSEMENTS. Notwithstanding sub. (1), if a disbursement is made or obligation incurred by an individual other than a candidate or by a committee or group which is not primarily organized for political purposes, ~~and the disbursement does not constitute a contribution to any candidate or other individual, committee, or group, and the disbursement is not made or the obligation is not incurred for the purpose of making a mass communication specified in s. 11.01 (16) (a) 3.~~ ^{or 4.} the disbursement or obligation is required to be reported only if the purpose is to expressly advocate the election or defeat of a clearly identified candidate or the adoption or rejection of a referendum. The exemption provided by this subsection shall in no case be construed to apply to a political party, legislative campaign, personal campaign, or support committee.

BILL

✓
SECTION 10. 11.12 (7) of the statutes is created to read:

11.12 (7) If any registrant makes or incurs an obligation to make a disbursement of more than \$500 cumulatively for the purpose of making a communication specified in s. 11.01 (16) (a) 3. or 4. later than 60 days prior to a primary or other election without cooperation or consultation with any candidate or agent or authorized committee of any candidate who is supported or opposed, and not in concert with or at the request or suggestion of any such candidate, agent, or committee, the registrant shall, within 24 hours after making the disbursement or incurring the obligation to make the disbursement, inform the appropriate filing officer of the information required under s. 11.06 (1) in such manner as the board may prescribe. The registrant shall also include the information in the next regular report of the registrant under s. 11.20. For purposes of this subsection, disbursements and obligations cumulate beginning with the day after the last date covered on the registrant's immediately preceding report and ending with the day before the election. If a registrant has not filed a previous report, disbursements and obligations cumulate beginning on the date of the registrant's registration. A disbursement that was previously reported in a report under this subsection as obligated to be made shall not be included in the cumulative total. Upon receipt of a report under this subsection, the filing officer shall, within 24 hours of receipt, transmit a copy of the report to all candidates for any office in support of or opposition to one of whom a disbursement identified in the report is made or obligated to be made.

✓
SECTION 11. 11.38 (title) of the statutes is amended to read:

11.38 (title) Contributions and disbursements by corporations and, cooperatives and labor organizations.

BILL

SECTION 12. 11.38 (1) (a) 1. of the statutes is amended to read:

11.38 (1) (a) 1. ~~No~~ Except as authorized in sub. (9), no foreign or domestic corporation, or association organized under ch. 185 or 193, may make any contribution or disbursement, directly or indirectly, either independently or through any political party, committee, group, candidate or individual for any purpose other than to promote or defeat a referendum.

SECTION 13. 11.38 (3e) of the statutes is created to read:

11.38 (3e) Each corporation, cooperative association organized under ch. 185 or 193, or labor organization that wishes to make disbursements or to incur obligations to make disbursements during a period when a finding of unenforceability under sub. (9) is in effect may do so only if a majority of the members of the board of directors, executive council, or other governing body of the corporation, association, or organization expressly votes to authorize the disbursements to be made or the obligations to be incurred ^{the 365-day period} ~~during the same calendar~~ ^{preceding the date on} ~~year~~ in which the disbursement is made or the obligation is incurred.

SECTION 14. 11.38 (9) of the statutes is created to read:

11.38 (9) If a court with jurisdiction in this state finds in a reported decision, whether or not applicable in this state, that a prohibition against the making of political expenditures by corporations or similar entities is not enforceable for constitutional reasons, or if any such court later finds in a reported decision that such a prohibition is enforceable, the board shall promptly publish a finding to that effect in the Wisconsin Administrative Register. The prohibition against disbursements under sub (1) (a) 1. does not apply whenever a finding of unenforceability is in effect if the corporation or association making a disbursement complies with sub. (3e).

SECTION 15. Initial applicability.

without cooperation or consultation with a candidate, or any authorized committee or agent of a candidate, and not in concert with, or at the request or suggestion of any candidate, or any authorized committee or agent of a candidate.

BILL

SECTION 15

(1) The treatment of sections 11.01 (12v), (12w), (13), (14), and (16) (a) 3. and 4. and 11.06 (2) of the statutes first applies with respect to contributions received, disbursements made, and obligations incurred on or after the effective date of this subsection.

(END)

Parisi, Lori

From: Laundrie, Julie

Sent: Monday, November 21, 2011 9:52 AM

To: LRB.Legal

Subject: Draft Review: LRB 11-2849/2 Topic: Disbursements by corporations; campaign finance scope of regulation

Please Jacket LRB 11-2849/2 for the SENATE.

11/21/2011

Kuesel, Jeffery

To: Karls-Ruplinger, Jessica
Subject: RE: LRB-2849/2

Jessica,
I'll take care of it.

Jeff Kuesel

From: Karls-Ruplinger, Jessica
Sent: Wednesday, December 14, 2011 12:46 PM
To: Kuesel, Jeffery
Cc: Laundrie, Julie
Subject: LRB-2849/2

Jeff,

Julie wants a /3 on LRB-2849 that adds a timeline to s. 11.01 (16) (a) 4. similar to what's in s. 11.01 (16) (a) 3. ("that is made during the period beginning on the 60th day preceding an election and ending on the date of that election"). She will send the jacket for LRB-2849 back to you.

Jessica

Jessica Karls-Ruplinger
Senior Staff Attorney
Wisconsin Legislative Council
(608) 266-2230
Jessica.Karls@legis.wisconsin.gov



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2849/2 3

JTK:wlj/kjf/cjs/med:rs

Stays

Mon 12/19

2011 BILL

SN

Gen Cat

1 AN ACT *to amend* 11.06 (2), 11.38 (title) and 11.38 (1) (a) 1.; and *to create* 11.01
2 (12v), 11.01 (12w), 11.01 (13), 11.01 (14), 11.01 (16) (a) 3., 11.01 (16) (a) 4., 11.05
3 (3) (s), 11.06 (1) (n), 11.12 (7), 11.38 (3e) and 11.38 (9) of the statutes; **relating**
4 **to:** political disbursements and obligations by corporations, cooperative
5 associations, and labor organizations and the scope of regulated activity and
6 reporting of certain activity under the campaign finance law.

Analysis by the Legislative Reference Bureau

Under current law, corporations and cooperatives are prohibited from making contributions or disbursements (expenditures) in campaigns for state or local office. Violators are subject to a forfeiture (civil penalty) of not more than \$500 for each violation. Intentional violators are guilty of a Class I felony, which is punishable by a fine of not more than \$10,000 or imprisonment for three and one-half years, or both, except that if a violation involves \$100 or less, the violation is punishable as a misdemeanor with a fine of not more than \$1,000 or imprisonment for not more than six months, or both. A recent decision of the U.S. Supreme Court has cast doubt about whether this law is enforceable as it applies to disbursements. See *Citizens United v. F.E.C.*, 130 S.Ct. 876 (2010).

This bill provides that if a court with jurisdiction in this state finds in a reported decision, whether or not applicable in this state, that a prohibition against the making of political expenditures by corporations or similar entities is not enforceable

BILL

for constitutional reasons, the Government Accountability Board (GAB) must publish a finding to that effect. The bill then provides that, during a period when a finding of unenforceability is in effect, before a corporation, cooperative, or labor organization may make a disbursement or incur an obligation to make a disbursement independently of a candidate, the corporation, cooperative, or labor organization must obtain the express approval of a majority of the members of the board of directors, executive council, or other governing body of the corporation, cooperative, or labor organization by vote of that body taken during the 365-day period preceding the date on which the disbursement is made or the obligation is incurred. The bill also requires each financial report filed by the corporation, cooperative, or labor organization that includes a report of any disbursement made, or obligation to make a disbursement incurred, by the corporation, cooperative, or labor organization independently of a candidate to also include a statement that a majority of the members of the board of directors, executive council, or other governing body of the corporation, cooperative, or labor organization has expressly voted to authorize the disbursement or obligation during the 365-day period preceding the date on which it is made or incurred.

Currently, individuals who accept contributions, organizations that make or accept contributions, and individuals who or organizations that incur obligations or make disbursements for the purpose of influencing an election for state or local office are generally required to register with the appropriate filing officer and to file financial reports with that officer, regardless of whether they act in conjunction with or independently of any candidate who is supported or opposed.

With certain exceptions, this bill imposes registration and reporting requirements, in addition, upon any individual who and organization that, within 60 days of an election, makes any mass communication, including an electronic communication, a mass distribution, or a mass telephoning, that includes a reference to a candidate at that election. The bill also imposes registration and reporting requirements upon any individual who or organization that, ~~at any time~~, makes any mass communication that refers to a candidate for judicial office and either focuses on and takes a position for or against a judicial candidate's position on an issue or takes a position on that judicial candidate's character, qualifications, or fitness for office. In addition, the bill requires an individual who or organization that becomes subject to a registration requirement by making such a communication to report, upon registration, the information that would have been required to be reported if the individual or organization had been registered with respect to any obligation incurred or disbursement made for the purpose of making such a communication prior to registration. The bill, however, does not require registration and reporting if the communication is made by a corporation, cooperative, or nonpolitical voluntary association and is limited to the corporation's, cooperative's, or association's members, shareholders, or subscribers.

The change in the scope of reportable activity under the bill also applies to contribution and disbursement (spending) limitations and restrictions by causing reportable "contributions," "obligations," and "disbursements" to include the cost of all reportable communications.

within
60 days
of an
election

BILL

The bill also requires a special report by any campaign finance registrant who makes or incurs an obligation to make a mass communication that becomes reportable under the bill within 60 days of a primary or other election in an amount greater than \$500 cumulatively since the date of the registrant's last report. The special report must be made within 24 hours after the date that disbursements or obligations that exceed \$500 cumulatively are made or incurred and must include the information that would otherwise be reported on the registrant's next regular report in the form prescribed by GAB.

Violators of registration and reporting requirements are subject to a forfeiture (civil penalty) of not more than \$500 for each violation. In addition, any person who is delinquent in filing a report is subject to a forfeiture of not more than \$50 or 1 percent of the annual salary of the office for which a candidate is being supported or opposed, whichever is greater, for each day of delinquency. Intentional violators of the registration requirements and persons who intentionally file false reports or statements may be fined not more than \$1,000 or imprisoned for not more than six months, or both, if the violation involves less than \$100 in amount or value, and may be fined not more than \$10,000 or imprisoned for not more than three years and six months, or both, if the violation involves more than \$100 in amount or value.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 11.01 (12v) of the statutes is created to read:

2 11.01 (12v) "Mass communication" means a message that is disseminated by
3 means of one or more communications media, a mass electronic communication, a
4 mass distribution, or a mass telephoning, but not including a bona fide poll
5 conducted for the purpose of objectively identifying or collecting data concerning the
6 attitudes or preferences of electors.

7 **SECTION 2.** 11.01 (12w) of the statutes is created to read:

8 11.01 (12w) "Mass distribution" means the distribution of 500 or more pieces
9 of substantially identical material.

10 **SECTION 3.** 11.01 (13) of the statutes is created to read:

BILL**SECTION 3**

1 11.01 (13) "Mass electronic communication" means the transmission of 500 or
2 more pieces of substantially identical material by means of electronic mail or
3 facsimile transmission.

4 **SECTION 4.** 11.01 (14) of the statutes is created to read:

5 11.01 (14) "Mass telephoning" means the making of 500 or more telephone calls
6 conveying a substantially identical message.

7 **SECTION 5.** 11.01 (16) (a) 3. of the statutes is created to read:

8 11.01 (16) (a) 3. A mass communication, other than a communication that is
9 exempt from reporting under s. 11.29, that is made during the period beginning on
10 the 60th day preceding an election and ending on the date of that election, and that
11 includes a reference to a candidate whose name is certified under s. 7.08 (2) (a) or 8.50
12 (1) (d) to appear on the ballot at that election.

13 **SECTION 6.** 11.01 (16) (a) 4. of the statutes is created to read:

14 11.01 (16) (a) 4. A mass communication that refers to a judicial office and either
15 focuses on and takes a position for or against a judicial candidate's position on an
16 issue or takes a position on that judicial candidate's character, qualifications, or
17 fitness for office.

18 **SECTION 7.** 11.05 (3) (s) of the statutes is created to read:

19 11.05 (3) (s) In the case of a registrant that has made a mass communication
20 identified in s. 11.01 (16) (a) 3. or 4., a report containing the information specified in
21 s. 11.06 (1) with respect to any obligation to make a disbursement incurred or any
22 disbursement made for the purpose of making such a communication prior to
23 registration.

24 **SECTION 8.** 11.06 (1) (n) of the statutes is created to read:

that is made during the period beginning on the 60th day preceding an election and ending on the date of that election and

BILL

1 11.06 (1) (n) In the case of a corporation, cooperative association organized
2 under ch. 185 or 193, or labor organization that makes disbursements or incurs
3 obligations to make disbursements without cooperation or consultation with a
4 candidate, or any authorized committee or agent of a candidate, and not in concert
5 with, or at the request or suggestion of, any candidate, or any authorized committee
6 or agent of a candidate, during a period when a finding of unenforceability under s.
7 11.38 (9) is in effect, a statement that a majority of the members of the board of
8 directors, executive council, or other governing body of the corporation, association,
9 or organization has expressly voted during the 365-day period preceding the date on
10 which the disbursement is made or the obligation is incurred to authorize the
11 disbursement to be made or the obligation to be incurred.

12 **SECTION 9.** 11.06 (2) of the statutes is amended to read:

13 11.06 (2) DISCLOSURE OF CERTAIN INDIRECT DISBURSEMENTS. Notwithstanding
14 sub. (1), if a disbursement is made or obligation incurred by an individual other than
15 a candidate or by a committee or group which is not primarily organized for political
16 purposes, and the disbursement does not constitute a contribution to any candidate
17 or other individual, committee, or group, and the disbursement is not made or the
18 obligation is not incurred for the purpose of making a mass communication specified
19 in s. 11.01 (16) (a) 3. or 4., the disbursement or obligation is required to be reported
20 only if the purpose is to expressly advocate the election or defeat of a clearly identified
21 candidate or the adoption or rejection of a referendum. The exemption provided by
22 this subsection shall in no case be construed to apply to a political party, legislative
23 campaign, personal campaign, or support committee.

24 **SECTION 10.** 11.12 (7) of the statutes is created to read:

BILL**SECTION 10**

1 11.12 (7) If any registrant makes or incurs an obligation to make a
2 disbursement of more than \$500 cumulatively for the purpose of making a
3 communication specified in s. 11.01 (16) (a) 3. or 4. later than 60 days prior to a
4 primary or other election without cooperation or consultation with any candidate or
5 agent or authorized committee of any candidate who is supported or opposed, and not
6 in concert with or at the request or suggestion of any such candidate, agent, or
7 committee, the registrant shall, within 24 hours after making the disbursement or
8 incurring the obligation to make the disbursement, inform the appropriate filing
9 officer of the information required under s. 11.06 (1) in such manner as the board may
10 prescribe. The registrant shall also include the information in the next regular
11 report of the registrant under s. 11.20. For purposes of this subsection,
12 disbursements and obligations cumulate beginning with the day after the last date
13 covered on the registrant's immediately preceding report and ending with the day
14 before the election. If a registrant has not filed a previous report, disbursements and
15 obligations cumulate beginning on the date of the registrant's registration. A
16 disbursement that was previously reported in a report under this subsection as
17 obligated to be made shall not be included in the cumulative total. Upon receipt of
18 a report under this subsection, the filing officer shall, within 24 hours of receipt,
19 transmit a copy of the report to all candidates for any office in support of or opposition
20 to one of whom a disbursement identified in the report is made or obligated to be
21 made.

22 **SECTION 11.** 11.38 (title) of the statutes is amended to read:

23 **11.38 (title) Contributions and disbursements by corporations and,**
24 **cooperatives and labor organizations.**

25 **SECTION 12.** 11.38 (1) (a) 1. of the statutes is amended to read:

BILL

1 11.38 (1) (a) 1. ~~No~~ Except as authorized in sub. (9), no foreign or domestic
2 corporation, or association organized under ch. 185 or 193, may make any
3 contribution or disbursement, directly or indirectly, either independently or through
4 any political party, committee, group, candidate or individual for any purpose other
5 than to promote or defeat a referendum.

6 **SECTION 13.** 11.38 (3e) of the statutes is created to read:

7 11.38 (3e) Each corporation, cooperative association organized under ch. 185
8 or 193, or labor organization that wishes to make disbursements or to incur
9 obligations to make disbursements without cooperation or consultation with a
10 candidate, or any authorized committee or agent of a candidate, and not in concert
11 with, or at the request or suggestion of any candidate, or any authorized committee
12 or agent of a candidate, during a period when a finding of unenforceability under sub.
13 (9) is in effect may do so only if a majority of the members of the board of directors,
14 executive council, or other governing body of the corporation, association, or
15 organization expressly votes to authorize the disbursements to be made or the
16 obligations to be incurred during the 365-day period preceding the date on which the
17 disbursement is made or the obligation is incurred.

18 **SECTION 14.** 11.38 (9) of the statutes is created to read:

19 11.38 (9) If a court with jurisdiction in this state finds in a reported decision,
20 whether or not applicable in this state, that a prohibition against the making of
21 political expenditures by corporations or similar entities is not enforceable for
22 constitutional reasons, or if any such court later finds in a reported decision that such
23 a prohibition is enforceable, the board shall promptly publish a finding to that effect
24 in the Wisconsin Administrative Register. The prohibition against disbursements

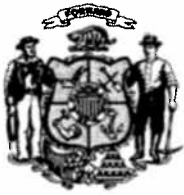
BILL**SECTION 14**

1 under sub (1) (a) 1. does not apply whenever a finding of unenforceability is in effect
2 if the corporation or association making a disbursement complies with sub. (3e).

3 **SECTION 15. Initial applicability.**

4 (1) The treatment of sections 11.01 (12v), (12w), (13), (14), and (16) (a) 3. and
5 4. and 11.06 (2) of the statutes first applies with respect to contributions received,
6 disbursements made, and obligations incurred on or after the effective date of this
7 subsection.

8 (END)



(D NOTE)
State of Wisconsin
2011-2012 LEGISLATURE

wed 12/21



LRB-2849/4

JTK:wlj/kif/cjs/med:rs

Stays

2011 BILL

(regenerate)

1 AN ACT ~~to amend~~ ^N 11.06 (2), 11.38 (title) and 11.38 (1) (a) 1.; and **to create** 11.01
2 (12v), ~~11.01 (12w)~~, 11.01 (13), 11.01 (14), 11.01 (16) (a) 3., 11.01 (16) (a) 4., 11.05
3 (3) (s), 11.06 (1) (n), 11.12 (7), 11.38 (3e) and 11.38 (9) of the statutes; **relating**
4 **to:** political disbursements and obligations by corporations, cooperative
5 associations, and labor organizations and the scope of regulated activity and
6 reporting of certain activity under the campaign finance law.

Analysis by the Legislative Reference Bureau

Under current law, corporations and cooperatives are prohibited from making contributions or disbursements (expenditures) in campaigns for state or local office. Violators are subject to a forfeiture (civil penalty) of not more than \$500 for each violation. Intentional violators are guilty of a Class I felony, which is punishable by a fine of not more than \$10,000 or imprisonment for three and one-half years, or both, except that if a violation involves \$100 or less, the violation is punishable as a misdemeanor with a fine of not more than \$1,000 or imprisonment for not more than six months, or both. A recent decision of the U.S. Supreme Court has cast doubt about whether this law is enforceable as it applies to disbursements. See *Citizens United v. F.E.C.*, 130 S.Ct. 876 (2010).

This bill provides that if a court with jurisdiction in this state finds in a reported decision, whether or not applicable in this state, that a prohibition against the making of political expenditures by corporations or similar entities is not enforceable

BILL

for constitutional reasons, the Government Accountability Board (GAB) must publish a finding to that effect. The bill then provides that, during a period when a finding of unenforceability is in effect, before a corporation, cooperative, or labor organization may make a disbursement or incur an obligation to make a disbursement independently of a candidate, the corporation, cooperative, or labor organization must obtain the express approval of a majority of the members of the board of directors, executive council, or other governing body of the corporation, cooperative, or labor organization by vote of that body taken during the 365-day period preceding the date on which the disbursement is made or the obligation is incurred. The bill also requires each financial report filed by the corporation, cooperative, or labor organization that includes a report of any disbursement made, or obligation to make a disbursement incurred, by the corporation, cooperative, or labor organization independently of a candidate to also include a statement that a majority of the members of the board of directors, executive council, or other governing body of the corporation, cooperative, or labor organization has expressly voted to authorize the disbursement or obligation during the 365-day period preceding the date on which it is made or incurred.

Currently, individuals who accept contributions, organizations that make or accept contributions, and individuals who or organizations that incur obligations or make disbursements for the purpose of influencing an election for state or local office are generally required to register with the appropriate filing officer and to file financial reports with that officer, regardless of whether they act in conjunction with or independently of any candidate who is supported or opposed.

With certain exceptions, this bill imposes registration and reporting requirements, in addition, upon any individual who and organization that, within 60 days of an election, makes any mass communication, including an electronic communication, a mass distribution, or a mass telephoning, that includes a reference to a candidate at that election.

~~The bill also imposes registration and reporting requirements upon any individual who or organization that, within 60 days of an election, makes any mass communication that refers to a candidate for judicial office and either focuses on and takes a position for or against a judicial candidate's position on an issue or takes a position on that judicial candidate's character, qualifications, or fitness for office.~~

In addition, the bill requires an individual who or organization that becomes subject to a registration requirement by making such a communication to report, upon registration, the information that would have been required to be reported if the individual or organization had been registered with respect to any obligation incurred or disbursement made for the purpose of making such a communication prior to registration. The bill, however, does not require registration and reporting if the communication is made by a corporation, cooperative, or nonpolitical voluntary association and is limited to the corporation's, cooperative's, or association's members, shareholders, or subscribers.

The change in the scope of reportable activity under the bill also applies to contribution and disbursement (spending) limitations and restrictions by causing reportable "contributions," "obligations," and "disbursements" to include the cost of all reportable communications.

BILL

The bill also requires a special report by any campaign finance registrant who makes or incurs an obligation to make a mass communication that becomes reportable under the bill within 60 days of a primary or other election in an amount greater than \$500 cumulatively since the date of the registrant's last report. The special report must be made within 24 hours after the date that disbursements or obligations that exceed \$500 cumulatively are made or incurred and must include the information that would otherwise be reported on the registrant's next regular report in the form prescribed by GAB.

Violators of registration and reporting requirements are subject to a forfeiture (civil penalty) of not more than \$500 for each violation. In addition, any person who is delinquent in filing a report is subject to a forfeiture of not more than \$50 or 1 percent of the annual salary of the office for which a candidate is being supported or opposed, whichever is greater, for each day of delinquency. Intentional violators of the registration requirements and persons who intentionally file false reports or statements may be fined not more than \$1,000 or imprisoned for not more than six months, or both, if the violation involves less than \$100 in amount or value, and may be fined not more than \$10,000 or imprisoned for not more than three years and six months, or both, if the violation involves more than \$100 in amount or value.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 11.01 (12v) of the statutes is created to read:

2 11.01 (12v) "Mass communication" means a message that is disseminated by
3 means of one or more communications media, a mass electronic communication, a
4 mass distribution, or a mass telephoning, but not including a bona fide poll
5 conducted for the purpose of objectively identifying or collecting data concerning the
6 attitudes or preferences of electors.

7 **SECTION 2.** 11.01 (12w) of the statutes is created to read:

8 11.01 (12w) "Mass distribution" means the distribution of 500 or more pieces
9 of substantially identical material.

10 **SECTION 3.** 11.01 (13) of the statutes is created to read:

BILL**SECTION 3**

1 11.01 (13) "Mass electronic communication" means the transmission of 500 or
2 more pieces of substantially identical material by means of electronic mail or
3 facsimile transmission.

4 **SECTION 4.** 11.01 (14) of the statutes is created to read:

5 11.01 (14) "Mass telephoning" means the making of 500 or more telephone calls
6 conveying a substantially identical message.

7 **SECTION 5.** 11.01 (16) (a) 3. of the statutes is created to read:

8 11.01 (16) (a) 3. A mass communication, other than a communication that is
9 exempt from reporting under s. 11.29, that is made during the period beginning on
10 the 60th day preceding an election and ending on the date of that election, and that
11 includes a reference to a candidate whose name is certified under s. 7.08 (2) (a) or 8.50
12 (1) (d) to appear on the ballot at that election.

13 ~~**SECTION 6.** 11.01 (16) (a) 4. of the statutes is created to read:~~

14 ~~11.01 (16) (a) 4. A mass communication that is made during the period~~
15 ~~beginning on the 60th day preceding an election and ending on the date of that~~
16 ~~election, and that refers to a judicial office and either focuses on and takes a position~~
17 ~~for or against a judicial candidate's position on an issue or takes a position on that~~
18 ~~judicial candidate's character, qualifications, or fitness for office.~~

19 **SECTION 7.** 11.05 (3) (s) of the statutes is created to read:

20 11.05 (3) (s) In the case of a registrant that has made a mass communication
21 identified in s. 11.01 (16) (a) 3. ^{or} ~~or~~, a report containing the information specified in
22 s. 11.06 (1) with respect to any obligation to make a disbursement incurred or any
23 disbursement made for the purpose of making such a communication prior to
24 registration.

25 **SECTION 8.** 11.06 (1) (n) of the statutes is created to read:

BILL

11.06 (1) (n) In the case of a corporation, cooperative association organized under ch. 185 or 193, or labor organization that makes disbursements or incurs obligations to make disbursements without cooperation or consultation with a candidate, or any authorized committee or agent of a candidate, and not in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of a candidate, during a period when a finding of unenforceability under s. 11.38 (9) is in effect, a statement that a majority of the members of the board of directors, executive council, or other governing body of the corporation, association, or organization has expressly voted during the 365-day period preceding the date on which the disbursement is made or the obligation is incurred to authorize the disbursement to be made or the obligation to be incurred.

SECTION 9. 11.06 (2) of the statutes is amended to read:

11.06 (2) DISCLOSURE OF CERTAIN INDIRECT DISBURSEMENTS. Notwithstanding sub. (1), if a disbursement is made or obligation incurred by an individual other than a candidate or by a committee or group which is not primarily organized for political purposes, and the disbursement does not constitute a contribution to any candidate or other individual, committee, or group, and the disbursement is not made or the obligation is not incurred for the purpose of making a mass communication specified in s. 11.01 (16) (a) 3. ~~the~~ the disbursement or obligation is required to be reported only if the purpose is to expressly advocate the election or defeat of a clearly identified candidate or the adoption or rejection of a referendum. The exemption provided by this subsection shall in no case be construed to apply to a political party, legislative campaign, personal campaign, or support committee.

SECTION 10. 11.12 (7) of the statutes is created to read:

BILL**SECTION 10**

1 11.12 (7) If any registrant makes or incurs an obligation to make a
2 disbursement of more than \$500 cumulatively for the purpose of making a
3 communication specified in s. 11.01 (16) (a) 3. ~~or~~ later than 60 days prior to a
4 primary or other election without cooperation or consultation with any candidate or
5 agent or authorized committee of any candidate who is supported or opposed, and not
6 in concert with or at the request or suggestion of any such candidate, agent, or
7 committee, the registrant shall, within 24 hours after making the disbursement or
8 incurring the obligation to make the disbursement, inform the appropriate filing
9 officer of the information required under s. 11.06 (1) in such manner as the board may
10 prescribe. The registrant shall also include the information in the next regular
11 report of the registrant under s. 11.20. For purposes of this subsection,
12 disbursements and obligations cumulate beginning with the day after the last date
13 covered on the registrant's immediately preceding report and ending with the day
14 before the election. If a registrant has not filed a previous report, disbursements and
15 obligations cumulate beginning on the date of the registrant's registration. A
16 disbursement that was previously reported in a report under this subsection as
17 obligated to be made shall not be included in the cumulative total. Upon receipt of
18 a report under this subsection, the filing officer shall, within 24 hours of receipt,
19 transmit a copy of the report to all candidates for any office in support of or opposition
20 to one of whom a disbursement identified in the report is made or obligated to be
21 made.

22 **SECTION 11.** 11.38 (title) of the statutes is amended to read:

23 **11.38 (title) Contributions and disbursements by corporations and,**
24 **cooperatives and labor organizations.**

25 **SECTION 12.** 11.38 (1) (a) 1. of the statutes is amended to read:

BILL

1 11.38 (1) (a) 1. ~~No~~ Except as authorized in sub. (9), no foreign or domestic
2 corporation, or association organized under ch. 185 or 193, may make any
3 contribution or disbursement, directly or indirectly, either independently or through
4 any political party, committee, group, candidate or individual for any purpose other
5 than to promote or defeat a referendum.

6 **SECTION 13.** 11.38 (3e) of the statutes is created to read:

7 11.38 (3e) Each corporation, cooperative association organized under ch. 185
8 or 193, or labor organization that wishes to make disbursements or to incur
9 obligations to make disbursements without cooperation or consultation with a
10 candidate, or any authorized committee or agent of a candidate, and not in concert
11 with, or at the request or suggestion of any candidate, or any authorized committee
12 or agent of a candidate, during a period when a finding of unenforceability under sub.
13 (9) is in effect may do so only if a majority of the members of the board of directors,
14 executive council, or other governing body of the corporation, association, or
15 organization expressly votes to authorize the disbursements to be made or the
16 obligations to be incurred during the 365-day period preceding the date on which the
17 disbursement is made or the obligation is incurred.

18 **SECTION 14.** 11.38 (9) of the statutes is created to read:

19 11.38 (9) If a court with jurisdiction in this state finds in a reported decision,
20 whether or not applicable in this state, that a prohibition against the making of
21 political expenditures by corporations or similar entities is not enforceable for
22 constitutional reasons, or if any such court later finds in a reported decision that such
23 a prohibition is enforceable, the board shall promptly publish a finding to that effect
24 in the Wisconsin Administrative Register. The prohibition against disbursements

BILL**SECTION 14**

1 under sub (1) (a) 1. does not apply whenever a finding of unenforceability is in effect
2 if the corporation or association making a disbursement complies with sub. (3e).

3 **SECTION 15. Initial applicability.**

4 (1) The treatment of sections 11.01 (12v), (12w), (13), (14), and (16) (a) 3. ~~and~~ ✓
5 ✓ and 11.06 (2) of the statutes first applies with respect to contributions received,
6 disbursements made, and obligations incurred on or after the effective date of this
7 subsection.

8 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2849/4dn

JTK.../:...
gwy

Date

Senator Erpenbach:

✓
The deletion of proposed s. 11.01 (16) (a) 4. in this draft causes the language of this draft to more closely parallel the language of the federal McCain-Feingold law that was approved by the U.S. Supreme Court in *McConnell v. F.E.C.*, 1254 S.Ct. 619 (2003) and therefore improves the constitutional posture of the draft by avoiding the use of a feature that has no parallel in federal law.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2849/4dn
JTK:wlj:rs

December 21, 2011

Senator Erpenbach:

The deletion of proposed s. 11.01 (16) (a) 4. in this draft causes the language of this draft to more closely parallel the language of the federal McCain-Feingold law that was approved by the U.S. Supreme Court in *McConnell v. F.E.C.*, 1254 S.Ct. 619 (2003) and therefore improves the constitutional posture of the draft by avoiding the use of a feature that has no parallel in federal law.

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